

PT 01-21

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

BEVERLY FARM ASSOCIATION)	
)	A.H. Docket # 99-PT-0014
Applicant)	
)	Docket # 98-60-59
v.)	
)	Parcel Index #s 24-1-01-24-00-000-002.001
THE DEPARTMENT OF REVENUE)	24-1-01-23-00-000-016.001
OF THE STATE OF ILLINOIS)	24-1-01-23-00-000-016.002

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. C. Raymond Bell, attorney at law appeared on behalf of Beverly Farm Association.

Synopsis:

The hearing in this matter was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 20, 2000, to determine whether or not Madison County Parcel Index Nos. 24-1-01-24-00-000-002.001, 24-1-01-23-00-000-016.001, and 24-1-01-23-00-000-016.002 qualified for exemption from real estate taxation for the 1998-assessment year.

Mr. Monte E. Welker, former executive director of Beverly Farm Foundation (hereinafter referred to as the "Foundation"), Ms. Martha A. Warford, executive director of the Foundation, Ms. Penny Allen, administrator of the developmental training program of the Foundation, and Ms. Brenda E. Miller, comptroller of the Foundation were present and testified on behalf of the Beverly Farm Association (hereinafter referred to as the "Applicant" or the "Association").

During 1998 the Foundation was an organization which provided residential and day training facilities and programs to mentally retarded adults. The Association was a companion not for profit corporation to the Foundation.

During July 1996 the Foundation finalized a refinancing of outstanding bonds and the obtaining of additional construction capital from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"). Security for this refinancing came from real estate and buildings owned by the Foundation. The Foundation owned other real estate and buildings including the three parcels here in issue, which were not required as security for the bonds. To conform to HUD regulations, the Foundation was required to convey these three parcels so that the Foundation no longer owned them. This was done by a quit claim deed dated July 27, 1996, conveying these parcels from the Foundation to the Association. On July 23, 1998, the Association filed the request for exemption here in issue.

The Non-homestead Property Tax Exemption Certificate in this matter issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") on January 22, 1999, indicates that the Department has determined that the Association is a charitable organization which owned these three parcels during the year at issue. The issue in this matter then is whether the Association used all or part of the three parcels here in issue for charitable purposes during the 1998-assessment year.

It is determined concerning Madison County Parcel Index No. 24-1-01-24-00-000-002.001 that the cabin and the land on which it stands as well as the yard area and the wooded area of this parcel were used for charitable purposes and consequently qualified for exemption during 1998. The portion of this parcel, which was leased for farming during 1998, did not qualify for exemption. It is also determined that Madison County Parcel Index No. 24-1-01-23-00-000-016.001 except the 5.53 acres which was leased for farming was used for charitable purposes and therefore qualified for exemption during 1998. It is determined that the 5.53 acres of Madison County Parcel Index No. 24-1-01-23-00-000-016.001 which was leased for farming during the 1998-assessment year did not qualify for exemption during that year. Finally, it is

determined that Madison County Parcel Index No. 24-1-01-23-00-000-016.002 qualified for exemption during 1998 except for the gift shop, the Christmas shop, the land on which they stand, and the parking lot, all of which did not qualify for exemption.

Findings of Fact:

1. The jurisdiction and position of the Department in this matter, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. The Association was incorporated on August 25, 1988, under the name of Beverly Farm Association for the Handicapped, pursuant to the General Not for Profit Act of Illinois.

The purposes of the corporation as set forth in the Articles read in part as follows:

The purposes for which the Corporation is organized are exclusively charitable and educational within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended and as so expressly limited shall be;

(A) To assist mentally retarded, or developmentally disabled individuals in obtaining some degree of education, socialization and integration in the community

To establish and operate a rehabilitation center for youths and adults having a recognized disability with special emphasis on the needs of mentally retarded persons; . . .

To establish and operate residential facilities for children and adults having a recognized disability with special emphasis on the needs of mentally retarded persons; (Dept. Ex. No. 2D)

3. On November 3, 1988, Beverly Farm Association for the Handicapped amended its Articles of Incorporation and changed its name to Beverly Farm Association. (Dept. Ex. No. 2E)

4. Both the Foundation and the Association are not for profit corporations which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code. (Tr. pp. 14 & 15)

5. In 1988, based on the way the State of Illinois was reimbursing facilities like Beverly Farm, two corporations in addition to the Foundation were created, namely the Association and also Beverly Farm Institute. Shortly after those corporations were created the State of Illinois again changed its method of reimbursement so that the reimbursement was based solely on the

functioning capability of the residents. After this change in the State's method of reimbursement the Association and the Beverly Farm Institute were no longer need, however, they were not disbanded. (Tr. p. 15)

6. After the State of Illinois changed its method of reimbursement, all of the real estate of Beverly Farm was owned by the Foundation. In addition, the Foundation operated all of the facilities of Beverly Farm including all of the residential and day training facilities for the mentally retarded residents. The residential facilities of the Foundation included residential cottages, group homes, and independent living apartments. The Foundation also operated recreational facilities, as well as the dietary, nursing, and maintenance facilities of Beverly Farm. In addition the Foundation operated day training facilities for the residents of Beverly Farm including a riding arena, greenhouse, resale shop, ceramics production area, and a classroom-training center. The Foundation also employed the personnel to operate all of these facilities. (Tr. p. 15, Dept. Ex. Nos. 2C & 2X)

7. In July 1996, the Foundation finalized a refinancing of outstanding bonds and the obtaining of additional construction capital from HUD. During this process the Foundation was required to give a mortgage covering its real estate and buildings as security. HUD did not require that the parcels of land and the buildings thereon which are the subject of this application be included in the mortgage. HUD regulations required that the Foundation dispose of these parcels. Consequently, the Foundation conveyed these parcels and the buildings thereon to the Association pursuant to a quit claim deed dated July 27, 1996. (Dept. Ex. Nos. 2A & 2C)

8. By issuing the Non-homestead Property Tax Exemption Certificate in this matter on January 22, 1999, which exempted portions of each of the three parcels here in issue, the Department indicated that it had determined that the Association was a charitable organization which owned these parcels during the entire 1998-assessment year. (Dept. Ex. No. 3)

9. Madison County Parcel Index No. 24-1-01-24-00-000-002.001 contains a cabin with a yard area and also a wooded area with trails. During 1998 the senior day training program of the Foundation used the cabin and the yard area for picnics and the trails for nature walks. Also

during 1998 the therapeutic horsemanship day training program of the Foundation used the trails. The therapeutic horsemanship program helps the residents by providing physical therapy and also helps with self-esteem and socialization of the riders. During the description of this parcel and its uses one of the witnesses for the Association noted that a portion of this parcel was leased for farming. (Tr. pp. 35, 36, & 52)

10. I take Administrative Notice of the Departments decision in Docket No. 89-60-512. That decision concerned an application for exemption filed by the Foundation for a parcel identified as Madison County Parcel Index No. 24-1-01-24-00-000-002. That parcel, like the parcel here in issue with the index number that ends in -002.001, includes the cabin and yard area, the wooded area, and nature trails. The Department in Docket No. 89-60-512 determined that the Foundation was a charitable organization and exempted the cabin and yard area, the wooded area, and the nature trails as being used for charitable purposes. The portion of Madison County Parcel Index No. 24-1-01-24-00-000-002, which was farmed during 1989, was denied exemption on the grounds that it was not in exempt use. (Tr. p. 36)

11. The Department determined that Madison County Parcel Index No. 24-1-01-23-00-000-016.001 qualified for exemption except 5.53 acres, which was being farmed. The Association offered no evidence or testimony concerning that parcel. A witness for the Association stated that the Association was not protesting the determination by the Department that 5.53 acres of that parcel did not qualify for exemption, because it was being farmed and therefore was not in exempt use. (Dept. Ex. No. 3, Tr. p. 27)

12. The Department determined that Madison County Parcel Index No. 24-1-01-23-00-000-016.002 qualified for exemption except for the gift shop, the Christmas shop, the land on which they are located, and the parking lot. (Dept Ex. No. 3)

13. Madison County Parcel Index No. 24-1-01-23-00-000-016.002 also contains the resale shop (Trinkets and Treasures), the ceramic workshop, the greenhouse, the horse-riding arena, and the holding pens for the horses, which the Department determined, were used for charitable purposes. (Dept. Ex. Nos. 2C, 2S & 3, and Tr. pp. 30 & 31)

14. The ceramic workshop, the greenhouse, and the horse-riding arena were part of Beverly Farms day training facilities. (Tr. p. 31)

15. The gift shop and the Christmas shop sell ceramic holiday items made by the residents as well as candles, floral arrangements, cards, and framed art. It was estimated that approximately 40% of the items sold in the gift shop during 1998 were produced by the residents and 60% of the items were purchased from suppliers for resale. (Tr. pp. 32, 33, & 41)

16. While one witness testified that two residents of this facility worked in the gift shop as clerks during 1998, the list of residents who were employed in the green house, resale shop, ceramics training area, and gift shop showed that no residents were employed in the gift shop during 1998. Another witness testified that there were no residents working in the gift shop and Christmas shop as clerks during 2000. There was testimony that the gift shop and Christmas shop were cleaned by cleaning crews consisting of residents who had learned their cleaning skills in the Foundation's day training classes. (Tr. pp. 43, 48, & 53, Appl. Ex. No. 2)

17. During 1998, the aforementioned list showed that there was one employee, who was not a member of the day training staff, who was in charge of the gift shop and Christmas shop area. This person was in charge of buying, selling, and clerking in those areas. (Tr. p. 53, Appl. Ex. No. 2)

18. The parking lot near the gift shop and Christmas shop is used for members of the public who come to purchase items in these shops. This parking lot is also used by vehicles that are loading and unloading products for the greenhouse. In addition this lot is used for vans and buses which are loading and unloading residents who are coming to the buildings in this area for day training. (Tr. p. 21)

19. I take Administrative Notice of the Department's determination in Docket Nos. 87-60-21 and -22 and also 87-60-48 and -49 in which it was determined that the Foundation was a charitable organization and that the Beverly Farm facility was using its property for charitable purposes during 1987.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, 35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity;
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of

Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). From the foregoing cases it is clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to the exemption.

In the Non-homestead Property Tax Exemption Certificate issued by the Department in this matter it was determined that, for the tax year at issue, the Association is a charitable organization and that it owned the three parcels here in issue. It has also been established by the Department in Docket Nos. 87-60-21 and –22 and also 87-60-48 and –49 as well as 89-60-512 that the Foundation is a charitable organization. I therefore conclude that, for the tax year at issue, both the Association and the Foundation are charitable organizations.

I take Administrative Notice of the decision in Docket No. 89-60-512 in which the Department determined that the cabin, and the yard area around it, as well as the wooded area, and the nature trails qualified for exemption when they were owned by the Foundation. The testimony in this case established that the cabin and the yard around it was used for picnics by the senior day training program as well as the trails which were used by the seniors for nature walks. It was also established that the residents in the therapeutic horsemanship day training program rode their horses on the trails in the wooded area of this parcel. I therefore conclude that the cabin, the area used as yard, as well as the wooded area of Madison County Parcel Index No. 24-1-01-24-00-000-002.001 was used for charitable purposes during the 1998- assessment year.

One of the witnesses for the Association testified that Madison County Parcel Index No. 24-1-01-24-00-000-002.001 included some farmland during 1998. The documents submitted by the Association do not indicate how much farmland was included in this parcel during 1998. Any area of this parcel, which was leased for farming, should remain on the tax rolls and be assessed to the Association for the 1998-assessment year. Illinois Courts have consistently held that the use of property to produce income is not a charitable use even if the income is used for charitable purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924).

See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied.

The Association offered no evidence or testimony concerning Madison County Parcel Index No. 24-1-01-23-00-000-016.001. Consequently I conclude that Madison County Parcel Index No. 24-1-01-23-00-000-016.001 qualified for exemption except for the 5.53 acres, which was leased for farming, as initially determined by the Department.

Concerning Madison County Parcel Index No. 24-1-01-23-00-000-016.002, the Department exempted that entire parcel except the gift shop, the Christmas shop, the land on which they stand, and the parking lot. Consequently the Department exempted the horse-riding arena, the ceramic workshop, and the greenhouse all of which are part of the Beverly Farm day training facilities which were used for charitable purposes. The resale shop qualified for exemption pursuant to the specific exemption provision concerning resale shops contained in 35 **ILCS** 200/15-65 (b) as set forth above.

The gift shop and the Christmas shop sell ceramic items made by the residents along with candles, floral arrangements, cards, and framed art, which are purchased for resale. While 40% of the items sold in the gift shop and Christmas shop were made by the residents during 1998, 60% were purchased from wholesalers for resale. While there is some conflict in the testimony, I conclude that residents of the facility did not work in the gift shop or Christmas shop during 1998. Residents also did not work in the gift shop and the Christmas shop during 2000. The person who performed most of the duties in connection with the operation of the gift shop and the Christmas shop was a full time employee of the Foundation and not a resident of the facility. The only connection between the day training programs of the Foundation and the gift shop and the Christmas shop was that a clean up crew being trained by the day training staff cleaned up the gift shop and Christmas shop during 1998. I therefore conclude that the primary use of the gift shop and the Christmas shop was to produce income. Illinois Courts have consistently held that the use of property to produce income is not a charitable use, even if the income is used for charitable purposes. People ex rel. Baldwin v. Jessamine Withers Home, *supra*. *See also* The

Salvation Army v. Department of Revenue, *supra*, leave to appeal denied. I therefore conclude that the gift shop, the Christmas shop, and the land on which they are located did not qualify for exemption during the 1998-assessment year because they were primarily used for the production of income.

The exemption concerning parking lots which is found at 35 **ILCS** 200/15-125 provides as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption are exempt.

The parking lot located on Madison County Parcel Index No. 24-1-01-23-00-000-016.002 is used by members of the public who come to purchase items for sale in the gift shop and the Christmas shop. The gift shop and the Christmas shop have not been determined to qualify for exemption. The parking lot is also used by vehicles that are loading and unloading products for the greenhouse. In addition, this parking lot is used by vans and buses which are loading and unloading residents who are coming to the buildings in this area for day training. The record in this matter is devoid of any evidence establishing the extent of any of the forgoing uses. In the case of Streeterville Corp. v. Department of Revenue, 186 Ill.2d 534 (1999), the Court held that where it was established that a specific percentage of a parking structure was used for parking by persons going to an exempt hospital, that percentage of the structure would qualify for exemption. However, in this case the Association has failed to establish that any identifiable portion of the parking lot was used for parking for exempt purposes. I therefore conclude that the parking lot located on Madison County Parcel No. 24-1-01-23-00-000-016.002 did not qualify for exemption and therefore should remain on the tax rolls for the 1998-assessment year.

I therefore recommend that Madison County Parcel Index No. 24-1-01-24-00-000-002.001 be exempt from real estate taxation for the 1998-assessment year, except for the portion that was farmed. I further recommend that Madison County Parcel Index No. 24-1-01-23-00-

000-016.001 be exempt from taxation for the 1998-assessment year except the 5.53 acres that was farmed. I also recommend that Madison County Parcel Index No. 24-1-01-23-00-000-016.002 be exempt from real estate taxation for the 1998-assessment year except for the gift shop, the Christmas shop, the land on which they stand, and the parking lot.

Finally I recommend that the portion of Madison County Parcel Index No. 24-1-01-24-00-000-002.001 leased for farming during 1998, the portion of Madison County Parcel Index No. 24-1-01-23-00-000-016.001 leased for farming during 1998, and the gift shop, the Christmas shop, the land on which they are located, and the parking lot located on Madison County Parcel No. 24-1-01-23-00-000-016.002 remain on the tax rolls for the 1998-assessment year and be assessed to the Association, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 2, 2001